

Exhibit 5

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

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6 OTTO E. THORNBURG, on)
7 behalf of himself and)
8 all others similarly)
9 situated,)
10) Case No:
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TRANSCRIPT DESIGNATED CONFIDENTIAL -
SUBJECT TO PROTECTIVE ORDER

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18 ZOOM VIDEOCONFERENCE VIDEOTAPE
19 DEPOSITION OF OTTO E. THORNBURG, taken on
20 behalf of the Defendant, before Margaret L.
21 O'Donnell, C.S.R., pursuant to Notice, on the
22 14th day of January, 2022.

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25 Job No. CS5026732

Veritext Legal Solutions

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1 A. Oh, that's Kincheloe.

2 Q. Kincheloe, okay. See, I knew I was
3 mispronouncing it. Kincheloe, thank you. But
4 you know who Judy Kincheloe is?

5 A. I do.

6 Q. Okay. So we recently spoke with her and
7 obtained this declaration and I want to show
8 you here, she signed it, she declared under
9 penalty of perjury. She indicated that she's
10 lived at her residence for 46 years and she
11 says here in number 4, Mr. Thornburg, I have
12 not experienced any odor while living at my
13 residence. Do you see that?

14 A. I do see it.

15 Q. Okay. And then she says she spends time
16 walking outside when she can. And then down
17 here on December 15th she says that she was
18 outside working with plants and didn't notice
19 any unusual smells. So I guess I just wanted
20 to ask you whether you have any reaction to
21 these particular statements from your nextdoor
22 neighbor?

23 A. I have none. I don't know why she couldn't
24 smell them. Actually they're in the house
25 most of the time, her husband, he probably

1 weighs 400 pounds, and she's out every once in
2 a while. But like I said, we had problems
3 years ago, so whatever she's saying, but I'm
4 telling you right now I smelled them. And if
5 they don't want to admit it or they don't want
6 to do anything, that's their business, but
7 they're not going to act like I'm lying 'cause
8 I'm not.

9 Q. Do you believe they're not telling the truth?

10 MR. ROBB: Objection to form.

11 A. I don't know if they are, I don't know their
12 capabilities of smelling anything or if
13 they're out there, but anybody that's ever
14 been around when I was there. Was she talking
15 about December 15th or earlier?

16 Q. Well, she says that I have not experienced any
17 odor while living at my residence.

18 A. That has to be totally false. I mean -- well,
19 I can't say that 'cause I don't know her
20 capability of smelling. But there's no doubt
21 in my mind she had to -- whoever was around
22 they had to smell it.

23 Q. Would you agree that different people can have
24 different reactions to odors?

25 A. Well, I think I already agreed to that, didn't

1 I?

2 Q. I don't know about that particular statement,
3 but are you agreeing to it now?

4 A. Yes.

5 Q. Okay. Do you agree that reasonable minds can
6 differ as to whether there is an odor that
7 affects the use and enjoyment of one's
8 property?

9 MR. ROBB: Objection to form and
10 seeking a legal conclusion. Go ahead.

11 A. Can you repeat that?

12 Q. Sure. Do you agree that reasonable minds can
13 differ as to whether there is an odor that
14 affects the use and enjoyment of someone's
15 property?

16 A. I'm not sure on that, I don't know.

17 Q. Would you agree that some people, even if they
18 smell an odor, that they may not believe they
19 have been harmed at all?

20 A. I think that's possible, considering all these
21 people, the things they consume in their body.

22 Q. Okay. What do you mean by that?

23 A. Well, these people that, well, say, for
24 instance, smoking or whatever like that. I
25 think people that smoke and that their sense